BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JORDAN-LEE W. STEPHENSON	)	
Claimant	)	
V.	)	
	)	Docket No. 1,070,087
MATCOR METAL FABRICATION, INC.	)	
Respondent	)	
AND	)	
	)	
HARTFORD CASUALTY INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant requested review of the December 4, 2015, Award by Administrative Law Judge (ALJ) Gary K. Jones. The Board heard oral argument on April 22, 2016.

APPEARANCES

Melinda Young, of Hutchinson, Kansas, appeared for the claimant. John M. Graham, Jr., of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument to the Board, it was noted the temporary total disability compensation (TTD) payment numbers provided by the parties were inaccurate. In an email to the Board dated April 23, 2016, with copy to claimant's attorney, the attorney for respondent advised TTD had been paid for 15.28 weeks at the weekly rate of $417.43, totaling $6,378.93. These stipulated payment numbers will be utilized in the calculation of any final award rendered in this matter.

ISSUES

The ALJ awarded claimant an 11 percent whole person functional impairment for injuries to his right and left upper extremities, based on the opinion of orthopedic surgeon Pat Do, M.D. The ALJ also found it more likely than not claimant will need future medical treatment, and awarded same upon proper application to and approval by the Director.

Claimant appeals, arguing he has a 25 percent whole body impairment based on the opinion of board certified physical medicine and rehabilitation specialist George G. Fluter,

M.D. Claimant contends Dr. Do's opinions should not be accorded more weight than the opinions of the other medical experts just because he was appointed as the neutral physician in this case.

Respondent argues the Award should be affirmed.

The issue on appeal is what is the nature and extent of claimant's impairment?

FINDINGS OF FACT

Claimant began working for respondent as a laser cell operator in April 2011. His job duties included cutting parts with a laser cell or laser CNC machine and placing the scraps in a pile to be ground later. Claimant would also pick up parts which he would flat check and ream out with a router, and he operated forklifts and hammers.

Claimant began to experience symptoms in both hands and arms in November 2013. He reported to his supervisor that he was having numbness at night and shooting pain down his hands during the day and that certain routines, such as carrying heavy parts with his elbows bent made his hands start to go numb. Claimant was evaluated and ultimately referred by respondent to board certified orthopedic surgeon Kevin M. Mosier, M.D.

Claimant met with Jason Kearns, PA-C, physician assistant to Dr. Mosier, on November 15, 2013, complaining of bilateral wrist pain for 5-6 weeks. Claimant reported the pain radiated into digits one through three on each hand, was worse in the morning and sometimes would wake him up in the middle of the night with numbness in his hands and fingers. He had an achy sensation in his wrists and hands at the end of the day and felt like his symptoms were getting worse.

Mr. Kearns examined claimant, noting claimant had good hand function, but a positive Tinel's sign, a positive Phalen's bilaterally at less than 60 seconds, with comfortable wrist range of motion, grip strength of 70 pounds with the left hand and 95 pounds with the right hand, and intact sensation bilaterally, with normal radial pulses. Mr. Kearns diagnosed claimant with work-related bilateral carpal tunnel syndrome. He recommended claimant use wrist splints at night, and that claimant have nerve conduction studies to both left and right wrists for evaluation of nerve function. Bilateral wrist x-rays were read by Dr. Mosier as showing normal wrist joint space without calcification.

Claimant met with Dr. Mosier on January 27, 2014, for a followup of work-related bilateral carpal tunnel syndrome. Electrodiagnostic testing revealed findings consistent with bilateral carpal tunnel syndrome and possible left ulnar neuropathy. Claimant had been working for respondent for three years but reported his job had become physically demanding. He used his hands frequently throughout the day hammering and grinding and with frequent lifting from 1 to 180 pounds. Dr. Mosier noted after claimant was diagnosed with carpal tunnel syndrome in November 2013, claimant had been taken off physically demanding work and was driving a forklift. Claimant had occasional pain in his thumbs and

numbness in his hands despite the use of splints. Claimant reported his hands occasionally go numb during the day with the operation of the forklift.

Dr. Mosier diagnosed work-related bilateral carpal tunnel syndrome and recommended staged bilateral carpal tunnel surgical release procedures, starting with the left. Claimant was instructed to continue with the work restriction of avoiding repetitive use of both hands.

Claimant had a left carpal tunnel release on February 13, 2014, and a right carpal tunnel release on March 13, 2014.

On February 26, 2014, claimant displayed normal sensation and some mild discomfort with use in the thenar area of the hand and volar wrist. Claimant continued to have severe opposite right hand carpal tunnel syndrome symptoms. Dr. Mosier removed the sutures in claimant's left hand, ordered blood work and scheduled claimant for a right carpal tunnel release.

On March 26, 2014, claimant reported both hands feeling better. He continued to have intermittent decreased sensation of the left hand involving the fourth and fifth fingers. He also had a mild Tinel sign at the left elbow cubital tunnel. Dr. Mosier noted the numbness in claimant's left fourth and fifth fingers seemed to be associated with sustained flexion of the left elbow.

Dr. Mosier released claimant to return to work on March 28 on light duty for four weeks with the restriction of no repetitious use of the hands and no forced gripping activities. Claimant and the doctor also discussed the left elbow cubital tunnel syndrome symptoms.

When claimant met with Dr. Mosier on April 23, 2014, claimant had no pain in his left hand, but had ulnar nerve compression symptoms with numbness occurring in the fourth and fifth fingers at night and occasionally during the day. Claimant's right hand had residual tenderness at the carpal tunnel surgery site and in the hypothenar area on occasion, pain in the palm of his hand with increased gripping activities and ulnar nerve symptoms affecting the fourth and fifth digits at night. Dr. Mosier diagnosed resolving post-surgical pain with the right hand carpal tunnel release. Claimant was showing symptoms of an associated ulnar nerve compression consistent with cubital tunnel compression. Electrodiagnostic tests performed on January 21, 2014, showed a decreased conduction velocity for the ulnar nerve at both the elbow and wrist. Dr. Mosier recommended observation and activity modification. Claimant was allowed to continue working, with restrictions to rotate job tasks, to limit repetitive hand motion and to avoid forced hand gripping activities.

On June 4, 2014, claimant was still employed by respondent, but not allowed to work without restrictions due to bilateral upper extremity nerve entrapment syndromes. Dr. Mosier determined claimant's bilateral carpal tunnel releases relieved his carpal tunnel syndrome symptoms with only residual symptom including some mild diminished grip strength. Claimant was having increasing symptoms consistent with cubital tunnel syndrome, with

frequent intermittent numbness and tingling bilaterally, in the fourth and fifth fingers, with the left worse than the right. This occurred on a daily basis and was aggravated by claimant's elbows being flexed.

Dr. Mosier diagnosed work-related bilateral cubital tunnel syndrome. He recommended electrodiagnostic studies of both upper extremities to evaluate for ulnar nerve entrapment at the elbow. Claimant was allowed to work with the restriction of limited repetitious hand motion, and no forceful gripping activities.

On August 1, 2014, Dr. Mosier diagnosed claimant with work-related bilateral cubital tunnel syndrome, left greater than right. He recommended a left cubital tunnel release to decompress the ulnar nerve, which was performed on August 21, 2014.

Claimant met with Dr. Mosier for followup of his left elbow cubital tunnel ulnar nerve release on September 5, 2014. Claimant's neurogenic symptoms were significantly improved, with claimant reporting only two occurrences of his arm and fingers going to sleep. He was having some similar symptoms, to a lesser degree on the right hand on a daily basis. Dr. Mosier noted claimant no longer worked for respondent and had a less demanding job. Claimant was released to return to work without restrictions, given the duties of his new job.

Dr. Mosier met with claimant on October 17, 2014, for followup of bilateral upper extremity work-related entrapment issues. Claimant had persistent right cubital tunnel ulnar nerve entrapment symptoms. He no longer had neurogenic symptoms in the left upper extremity. But claimant had fairly constant decreased sensation, numbness and tingling in the fourth and fifth fingers of the right hand, accentuated by 10 seconds of an elbow flexion compression test and positive Tinel signs over the cubital tunnel. Dr. Mosier diagnosed right cubital tunnel syndrome and recommended a right elbow cubital tunnel release, which was performed on October 30, 2014.

On November 14, 2014, claimant was two weeks post right cubital tunnel release. He had good range of motion in the elbow and his hand felt better. He no longer had numbness or tingling in his right hand.

On December 12, 2014, claimant was six weeks post right cubital tunnel release. He no longer had numbness in his right hand and only occasional shooting pain in his arm. He had some occasional burning in both his hands, with increased use. He had to take short breaks and do stretching exercises before continuing. Claimant was working with restrictions. Claimant was found to be at maximum medical improvement and released from care with no restrictions.

In a letter dated January 19, 2015, Dr. Mosier assigned claimant a 2 percent permanent functional impairment to the right upper extremity as a direct result of his work-

related injuries. This impairment is based on the 4th Edition of the AMA *Guides*.[1] He testified this rating was for residual nerve symptoms in the right upper extremity. He did not rate the left because claimant had no symptoms in the left, having fully recovered.

At his last visit with Dr. Mosier, claimant reported continuous pain and some numbness. Claimant indicated this would start at night in his hands and he or his wife would have to rub his hands until the pain was gone. Claimant testified the only benefit he received from his surgeries was he no longer had numbness in his thumbs or his index and middle fingers on both hands.

Claimant testified his ring fingers and little fingers and the lower half of his hands and part of his forearms still go numb. He continues to have sharp nerve pain in his hands. He also complained of pain in the upper parts of his hands, a pins and needles sensation when he carries things and a burning sensation that leads to sharp pains. When this happened he would stop what he was doing and wait for the pain to pass. These problems would wake him up at night and made it difficult for him to hold his children. Dr. Mosier testified he was not aware of the complaints claimant reported in his July 31, 2015, deposition testimony.

As for future medical treatment, claimant was told a nerve relocation for both arms was an option. This procedure would involve the relocation of the ulnar nerve to the opposite side of the arm. Claimant declined the procedure when it was offered by Dr. Do, because he was starting a new job and did not want to risk losing the job. He would, at some point, be willing to undergo the surgery. Claimant testified he felt Dr. Mosier did a good job on the surgeries, but he is not satisfied with the total outcome.

Claimant met with George Fluter, M.D., on March 2, 2015, for an examination, at the request of his attorney. Claimant reported pain in his elbows, wrists and hands, and described it as sharp, aching, shooting and burning. Dr. Fluter put claimant's pain in the severe level and noted exercise and cold made the pain worse. Claimant reported the pain was intermittent, occurring 5 to 6 days a week. Claimant experienced numbness and weakness in his hands while working, weakness using his arms and hands for short periods and severe pain in his elbows and hands. Claimant reported his hands cramped a lot and he had a burning sensation in his hands when doing tedious activities.

Dr. Fluter examined claimant and diagnosed bilateral upper extremity pain/dysesthesia; bilateral upper extremity repetitive use/cumulative trauma disorder; bilateral carpal tunnel syndrome; status post left carpal tunnel release surgery; status post right carpal tunnel release surgery; bilateral cubital tunnel syndrome; status post left cubital tunnel release surgery, and status post right cubital tunnel release surgery. He determined there was a causal/contributory relationship between claimant's current condition and repetitive work-related activities involving the upper extremities. Dr. Fluter indicated the

[1] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

activities were over and above those associated with routine activities of daily living. He opined the prevailing factor for the condition, the need for the medical evaluation/treatment, and the resulting impairment/disability is the reported work-related activities.

Dr. Fluter assigned the following impairment ratings based on the AMA *Guides*: 10 percent permanent partial impairment to the right upper extremity and 10 percent permanent partial impairment to the left upper extremity for mild degree of postoperative median nerve entrapment at the right and left wrists; 10 percent permanent partial impairment to the left upper extremity for mild degree of postoperative ulnar nerve entrapment of the left elbow; 5 percent permanent partial impairment to the right upper extremity for postoperative ulnar nerve entrapment at the right elbow that falls between normal and mild; 3 percent permanent partial impairment to the right upper extremity at the elbow and 2 percent permanent partial impairment to the left upper extremity at the elbow for range of motion deficits; and 5 percent permanent partial impairment to the right upper extremity at the wrist and 3 percent to the left upper extremity at the wrist for range of motion deficits. The upper extremity impairments were combined for 21 percent to the right upper extremity and 23 percent to the left upper extremity and converted to 13 percent whole body to the right upper extremity and 14 percent whole body to the left upper extremity and then combined again for a 25 percent whole body impairment.

Dr. Fluter assigned the following restrictions: restrict lifting, carrying, pushing and pulling to 50 pounds occasionally and 20 pounds frequently; restrict repetitive flexion, extension, pronation, and supination of each elbow to an occasional basis; restrict repetitive flexion, extension, radial deviation, and ulnar deviation of each wrist to an occasional basis; restrict repetitive grasp using each hand to an occasional basis; restrict use of power/vibratory tools with each hand to an occasional basis; provide appropriate thermal protection for the hands when working in cold environments; and avoid activities resulting in direct pressure over the right and left elbow.

Dr. Fluter found a need for future medical treatment likely, given claimant's upper extremity conditions and impairments.

Claimant met with Pat Do, M.D., on June 13, 2015, for a court-ordered Independent Medical Examination (IME). Claimant reported stiffness in his finger when he wakes up and numbness in his ulnar innervated fingers on his hands.

Dr. Do opined claimant was post bilateral cubital tunnel release and bilateral carpal tunnel release with Dr. Mosier. Dr. Do examined claimant and found claimant to be at maximum medical improvement and described claimant's work activities as the causative factor in his need for treatment for the bilateral elbows, bilateral wrists and any kind of resulting impairment.

Dr. Do assigned claimant a 5 percent permanent impairment for the right upper extremity carpal tunnel syndrome and a 4 percent permanent impairment for right cubital tunnel. For the left upper extremity, 3 percent residual permanent impairment and 7 percent

permanent impairment for left cubital tunnel. He combined the impairments for a 9 percent to the right upper extremity and 10 percent to the left upper extremity. He then combined the upper extremity impairments for an 18 percent upper extremity impairment, which converts to an 11 percent whole person impairment. All ratings were pursuant to the AMA *Guides*, 4th ed. No permanent work restrictions were assigned.

Claimant resigned his position with respondent on June 8, 2014, because his wife obtained a new job and they moved to Colby, Kansas. Claimant then worked for Quality Inn for three weeks performing maintenance work (beginning at the end of July 2014) and then Sleep Inn for six months in the maintenance department. He currently works for Kansas Grain Inspection Service where claimant collects samples from rail cars and grades the grain.

Claimant is making less money than he was making working for respondent, and has to modify his jobs because of the physical limitations with his upper extremities. He testified he works on a team and whoever is with him for the day does most of the heavy and repetitive lifting.

Claimant testified that the only upper extremity problems requiring medical treatment before respondent involved a fracture of his left ring finger in high school. He did have an earlier laceration on his left hand during his employment with respondent.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2013 Supp. 44-501b(b)(c) states:

> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2013 Supp. 44-510e(a)(1)(B) states:

> (B) The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

This record contains three functional impairment opinions. Dr. Mosier's opinion appears to be based upon the premise that claimant had little or no complaints in his upper extremities after the bilateral surgeries on his wrists and elbows. That conclusion is not supported by claimant's testimony or by the doctors' medical reports. As such, the Board does not find the opinion of Dr. Mosier to be persuasive in this instance. Claimant appeared to have ongoing complaints in both upper extremities after the surgeries. His conditions had improved but were not healed.

The impairment ratings of Dr. Fluter, on the other hand, gave ratings for range of motion loss, without a sufficient explanation as to how those losses related to claimant's work-related injuries and subsequent surgeries.

Dr. Do appears to most closely assess claimant's conditions and functional ratings. But even he seemed to rate claimant's ultimate functional loss somewhat low, considering the level of residual complaints displayed by claimant.

In reviewing the overall condition of claimant, the extent of his functional injuries, the numerous surgeries claimant underwent and the resulting findings by the health care providers, the Board finds claimant has suffered functional loss less than that of Dr. Fluter, but more than either Dr. Mosier or Dr. Do. The Board, as the finder of fact, finds claimant has suffered a 15 percent functional whole person impairment from these injuries and resulting surgeries.[2] The Award of the ALJ is modified accordingly.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be modified to consider the appropriate amount of TTD paid claimant and to award claimant a 15 percent whole person functional impairment for the injuries suffered to claimant's upper extremities while working for respondent. In all other regards, the Award is affirmed insofar as it does not contradict the findings and conclusions contained herein.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Gary K. Jones dated December 4, 2015, is modified to show claimant having received 15.28 weeks of TTD at the rate of $417.43, totaling $6,378.93. Thereafter, claimant is awarded a 15 percent whole person functional impairment.

Claimant is entitled to 15.28 weeks of TTD at the weekly rate of $417.43, totaling $6,378.93 followed by 62.21 weeks at the rate of $417.43, totaling $25,968.32 for a 15

[2] *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

percent whole person functional impairment, making a total award of $32,347.25, all of which is due and owing and ordered paid in one lump sum, minus amounts previously paid.

The remainder of the Award is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this _____ day of May, 2016.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
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